

## Copyright in the Stacks: The Chilling Effects of Unclear Copyright Interpretations in the Canadian Academic Library

**Abstract:** The Canadian academic library is often seen as a vibrant place where the creation and sharing of knowledge plays a pivotal role in the intellectual life of the University. However this longstanding tradition is slowly being eroded by changes in copyright legislation and through infringement claims from content creators. Libraries are increasingly being placed in situations where they are expected to provide access to licensed material without clear ideas on what acceptable terms of use accompany those materials. Due to this lack of clarity Libraries are rescinding key services and being forced to spend ever increasing amounts to ensure proper licensing fees and usage rights are established. This paper will describe the current landscape surrounding this phenomenon and shed light on the chilling effects of these unclear interpretations. These results will be then be contrasted against the gains that Libraries have been making on behalf of their users in terms of advocacy and education in alternative forms of copyright.

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The purpose of the library in the academy is very much a support role to the pursuit of knowledge and the facilitation of research and teaching. It is not hyperbole to say that the printed word allowed the university to transmit ideas and to create a record of knowledge. This record of knowledge persisted in part to the durability and immutability of this printed word. In fact many traditions in the library are shaped due to this aspect. Further, copyright law and practice grew around this tradition of paper and created, at the minimum, a coherent landscape of rules and norms between content creators and library users.

This coherent landscape has been flipped on its head in recent years due to two particular changes: the ambiguity surrounding allowable use under copyright law, and a change from paper based transmission of ideas to an electronic based transmission. An examination of these two changes and how they have threatened traditional library services will be developed. A discussion of what has been done by libraries in response to these two phenomena will be presented.

### **Traditional Services in the Library and the Rise of Unclear interpretation**

When considering the workflow with the library the basic premise is that there exists a discourse of published material that far exceeds the available time and resources that any one institution can devote to accumulating. The defining characteristic of the library then is to work through this information by being informed of the research and teaching being done at the academy. A librarian completes this through a process called collection development and in its most basic sense this is tantamount to purchasing the appropriate material for addition to the collection. In the history of the modern library this has more or less been a straightforward process. A publisher advertises a new work, that work is added to a list of new titles organized by a third party such as a distributor, and this list is then presented to the librarian. Once a piece is selected for addition to the collection, the physical copy is sent to the Library, it is then processed with identifying labels, and added to the central index of all library materials where it is added to a thematic, title, and author index. A user curious in researching a topic consults the index through different search mechanisms and ends up with a list of material they wish to consult. The next step is to retrieve the physical item from the shelf and begin reading.

Further ancillary services complement this process. The one that best demonstrates the implicit collegial nature of library cooperation is a process known as interlibrary loan. If a library user identifies a work they are interested in consulting, (through a works cited list for example) that the library does not have in the collection, they merely contact a librarian and request a copy. The librarian will then source the material by contacting other local libraries or affiliated institutions asking to borrow the material at the behest of the interested user. Through an understood and well developed system of reciprocity the loaning library place the item in the mail and it is sent to the lending library where it is placed in the hands of the original user. Once the user has completed their work with the requested item it is shipped back to the original library with thanks. The process all told is most often completed without any fees or direct user charge.

Similarly there is also another service popularly offered by most academic libraries that directly supports classroom teaching as opposed to self-directed research. This service may have many different names or provision levels depending on what library is offering it but most often it is known as a 'reserve collection'. The reserve collection is created through a collaborative effort usually between the professor of a course and the librarian. The professor identifies a list of materials from the library's collection that is of primary importance to pedagogical needs of a class. These materials are then removed from the general collection and (most often) physically located in another area in the Library and are further processed. They have their usual loan period drastically reduced, and are added to a course based index. A student is given a syllabus at the beginning of term that outlines the required readings for the weeks ahead along with some instructions that these pieces are available at the library at the reserve desk. The student proceeds to the library asks for the readings for week one and without much hunting and retrieving is presented with a bundle of material.

Much like the example of the interlibrary loan, the services associated with the reserve collection are offered without any end cost to the library user. They are simply a course of proper library business. Succinctly this is made possible by the notion of the first sale doctrine. That is to say the original content provider transfers ownership of the item to the purchasing library and no longer has any jurisdiction upon the use of that item. The only recourse is that the original content provider may be able to raise issue if the purchaser (ie. the library) is making and distributing illegal copies of the acquired work. So the library representing the needs of a large aggregation of users creates equitable methods like interlibrary loan and the reserve collection to best share a limited paper copy amongst many users. Sparing the users from each purchasing the published work themselves.

These idolized library transactions are presented as a historical contrast to the stark reality of how difficult it is now to emulate such activity in the modern academic library. This move away from such traditionally defined interactions is driven by a number of factors, but can be mostly characterized by the creeping scope of copyright interpretation and legislation along with the technology that is taking content distribution away from the physical paper object to a stream of characters in a digital environment. First a look at the copyright concerns and how they traditionally covered Library material. In the broadest sense copyright is a government mandated monopoly this is meant to protect content creators by giving them exclusive distribution rights on material they create for a set period of time. This monopoly is meant to ensure content creators are compensated fairly for their work, and in a sense exists to create an incentive for content creators to keep creating content. Rules on the specifics on the term of copyright vary between countries depending on their traditions but quite often there are a few key characteristics common to these rules. Namely the length of copyright is at least decades long (most often the life the original author plus many extra decades) and the fact there are some exemptions to the strict enforcement of copyright when the material being used is in an educational setting.

In the Canadian context this second concern is mitigated through the activities of a copyright licensing collective known as Access Copyright. The general premise is that educational institutions (i.e., academic libraries) purchase copyright protected materials on their users' behalf. Since every piece of material is potentially used by many users, this multi user, multi-use scheme creates many potential lost sales for the content creator. Enter Access Copyright. As a way to compensate users a tariff is negotiated and applied per student at all Canadian educational institutions. This tariff is developed under the watch of the Copyright Board of Canada and usually is passed through to the student as part of ancillary fees. The payment of this tariff then allows users to go about their usual library business of consulting works from the collection for inclusion in research papers or as teaching materials. Quite often tacked to the wall behind the photocopier in the library is an indemnifying poster whose purpose is to alert the user of what their obligations are with respect to copyright legislation. This most often includes statements on the agreement with Access Copyright, the educational provisions of copyright legislation and a cautionary note that complete reproduction of a protected work is most certainly a violation of copyright regulation.

Cooperating with Access Copyright in effect enabled institutions to save themselves a lot of work in regard to copyright enforcement. This scheme continued quite cordially until the end of 2010. The proposed 2011 agreement Access Copyright brought forward a new set of proposed terms (Lorinc, 2010). Instead of aligning with past practice it brought forward a scheme that endorsed a much more restrictive pricing scheme than the previous license. Instead of 3.38\$ for each full time equivalent student plus a 10 cent per page per course pack charge, a flat rate of 27.50\$ per full time equivalent student<sup>1</sup> was proposed. This new license was also coupled with some extraneous requirements institutions would need to follow in order to comply with the agreement. One of the most trouble stipulations was an explicit request to monitor and determine (through electronic eavesdropping) if any copyright use transgressions were occurring (Trosow et al, 2012). Suddenly the costs associated, and required obligations of conforming to Access Copyright rules became untenable. Major Canadian institutions such as Western University, and University of Toronto were suddenly considering alternatives to resigning agreements with Access Copyright. These considerations drew out into such a protracted period that Access Copyright was forced to create an interim tariff that institutions could sign to remain covered while the primary negotiations continued (CAUT, 2012).

Other smaller institutions signed to the interim agreement following the example of larger schools. It became clear as time went on however that most institutions would not continue with the blanket agreement with Access Copyright and instead would inform their understanding of copyright enforcement by implementing what became to be known as a "fair dealing" policy. In essence the fair dealing policy means that the institution will operate under a model that treats use of copyright protected material by what is known as the "fair dealing"

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<sup>1</sup> The actual figure fluctuated as negotiations persisted. Earlier in the process the fee was as high as 45\$ per student.

provision of Canadian copyright law C-11. In essence fair dealing stipulates that the use of a copyright protected material can be utilized without expressed permission of the copyright holder under a small set of allowable uses. Of these allowable uses the most important in the library setting is teaching and research. If proposed use fails to fall into one of these categories or exceeds the proportional restrictions fair dealing allows for (in most cases 10% of the work) it is the responsibility of the library user to ascertain how to obtain copyright permission to use the work. Quite often this means reverting back to obtaining rights via Access Copyright but it is important to mention this acquisition of rights is totally the responsibility of the end user, and not the library.

The legality of the reserves collection has been the subject of a recent court decision in the United States. Copyright rules function in many different ways in the United States but the general terms can be applied to this situation easily. In 2008 3 large publishing houses filed a suit against Georgia State University alleging their e-reserve system was supporting copyright infringement. Demonstrated here is a decisive attempt to disrupt the function of the reserves framework as it applies to electronic resources. In total 99 alleged violations were brought before the court wherein the plaintiffs stated that excerpts put on course reserve at the behest of professors were in violation of the American copyright provision known as “fair-use”. “Fair-use” is different than the similarly named Canadian provision “fair-dealing” as mentioned previously but functionally speaking it operates in much the same way. In short it is the slightly differentiated American mechanism that allows one to use a copyright protected work without first obtaining permission from the content creator. Many different categories of use are articulated in this scheme, as in the Canadian one, but once again the most useful in this case is that for teaching. If a piece of content is going to be used under fair-use provisions it needs to pass a four part test. The plaintiffs in the suit alleged that the Georgia State e-Reserve system failed to follow these guidelines and thus usage through the system constituted copyright infringement. The judge presiding over the case evaluated all of the instances and immediately threw out several of them as they were *prima facie* consistent with fair-use provisions. Of the remaining 75 cases the judge concluded that only 5 were found to be infringing and ordered restitution for these instances (Schwartz, 2012). While most observers considered this a victory for Georgia State and the legality of the reserves collection of the Library, the decision does cast a long shadow upon libraries with similar reserves programs. Defending a case of this magnitude would have such substantive financial obligation that smaller institutions would have no choice but to capitulate to demands, even if they were observing and operating within fair use boundaries.

### **Electronic Delivery changes the Landscape**

Utilizing the rights granted through the previously mentioned first sale doctrine worked adequately enough until the popularization of electronic content. This is due to the purchasing model described earlier being completely flipped on its head. Instead of a clear purchase of material, through the acquisition and delivery of a paper object, libraries were starting to pay

for access to electronic material hosted in data centers located at publisher headquarters. Most often perpetual access under these schemes simply isn't an option. This distinction is critical to point out. Instead of enjoying rights as the owner of the material, libraries were now leasing the content. Access to this content could be revoked at any time that the provider decided upon. For example when an annual subscription period was over, or if the material provided received an excessive amount of use. This last condition is of interesting note. In 2011 a group of e-book publishers that included Penguin and HarperCollins sought to limit the total number of uses of any one particular e-books they provided to a Library to 26. So if a Library were to purchase access to an electronic title under this scheme their users would only be able to access the content 26 discrete times. The original justification offered for this rationale was that a 'typical' paper books would only survive 26 uses before needing to be replaced and thus an e-book being analogous to a paper book too should only last 26 uses. (Misener, 2011) The backlash to the announcement was decisive and immediate. Penguin reneged on the policy shortly thereafter, but HarperCollins refused to back down on the matter, and is still selling e-books with this restriction.

This shift to digital has disrupted usage patterns, not in a liberating way that one would expect with the decrease in the technological barrier of entry. Barriers are in fact being erected to create limitations to slow down use and increase the friction between users and library content. This phenomenon is best characterized by technical limitations placed upon how this library content can be used and shared. These limitation are referred to in Canadian copyright legislation as Technological Protection Measures (TPM). The TPM is a mechanism given to the content producers to forcibly ensure their copyright rights are used according to regulations. Electronic materials by their very nature are ephemeral and easily duplicated. A TPM exists to stop this easy duplication. The most common example of a TPM in the everyday consumer realm is the restrictions placed on DVDs. To ensure a DVD can only be played on an authorized device it is encoded with a TPM known as Content Scrambling Service<sup>2</sup> (CSS). When a manufacturer brings a DVD player to market they must negotiate and pay for rights to put CSS on their device. Often this includes a payment of a royalty. The end consequence is that the home user can purchase a DVD, place it in an authorized device and begin watching the film. The content creator is compensated fairly by the purchase of the DVD, a TPM is enforced to ensure that Copyright rules are properly followed, and the end user gets to consume the content in a way that more or less is suitable to their tastes.

TPM's however aren't just used to ensure copyright regulations are followed but to impose arbitrarily set usage patterns thought up by the content providers. To return to our previous example of the DVD, a similar TPM called regional encoding is often enforced. In regional encoding the world is split up in a few general markets and assigned a name based on a number. Region 1 is North America, Region 4 is Japan, etc. Then when a DVD creator brings a

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<sup>2</sup> <http://www.dvdcca.org/css.aspx> provides some of the background on the licensing and royalty schemes associated.

product to market they can further encode what region it is playable in. In effect a North American edition of a movie is sold alongside the European edition. Oddly enough the content on the DVD is the same in both markets, the TPM just exists to create an arbitrary blockade. Does regional encoding help enforce the copyright monopoly enjoyed by the content creator? This is very much debatable, but the clear effect of this TPM is that sharing cultural assets becomes impossible. Imagine a European film only available on a regionally encoded DVD. It would be impossible to lawfully watch the movie in North America if all other copyright conditions were being respected. I.e. it was lawfully obtained, and its use is for educational study (or for some other fair use/fair dealing category) that is expressly included as appropriate use in copyright legislation. To further complicate the issue circumvention of TPM's is expressly prohibited by copyright legislation, even if it is for something that would be a lawful use. The DVD is a well-known case of TPMs faced by popular society on a daily basis that more or less has become the cost of doing business. Those interested in watching a movie have to abide by restrictions placed up on the device.

This idea of restrictive TPM has also be placed upon the delivery mechanism of e-books licensed by the library. Previously it was alluded to that the function of interlibrary loan and the reserves collection were made possible due to rights granted by the first sale doctrine to a library in lieu of the acquisition of the paper copy of a work. Now electronic distribution methods can have access restrictions built right into the very infrastructure that delivers the content in the first place. No exclusive transfer of rights is made as the 'purchase' is in effect a temporary license to access that content. For example, most e-books purchased by a library are hosted and made available through a very restrictive web interface that will only present content to a user one page at a time. These systems can also disable the copy/pasting of text and almost always require additional accounts to be created with the content provider by the library user before being able to access the content. It is also not uncommon for a maximum concurrent user limit to be imposed upon an e-book. In the case were the marginal cost to delivery another e-book to an additional user of the library is practically negligible an addition premium is charged for it.

For example two users may by pure coincidence access the same material in a similar time frame, and the second user is told that someone else is using this e-book and that they will have to wait until that use is completed. Imagine looking at a newspaper article online and being told someone else is currently viewing this and your access rights don't allow you to view it as well. This very set up pre-empts the possibility of interlibrary loan. How can the lending library provide access to the requesting library of an e-book object that is shrouded in restrictive TPMs? It is also easy to see the effect that this process has upon the reserve collection. If a book is available to only one concurrent user imagine how this would look for a class of students even larger than a dozen, its use becomes untenable. There is no advantage to electronic access versus a paper version. If student A opens the e-book and begins to read, thereby locking any other student from accessing the content, it is functionally worse than a paper copy. In the paper situation if a student is interested in only chapter 1, the most likely

course of action is that the student photocopies the relevant section of the work and returns the title back when this process is completed, thus making it free for another student to use. The book is only tied up during the relatively short process of photocopying. If the same book is only presented electronically a page at a time, the student needs to read page by page the interested section or chapter before relinquishing it so that another student may read it. These TPMs can be used to arbitrarily impede access due to the way they are constructed.

Recently Adobe, a company that produces many different TPM products for the publishing world announced a major upgrade to encryption software that would render previously purchased materials unavailable since the TPMs that enabled their use would be discontinued in favor of a more sophisticated TPM scheme. The reasoning behind the move was that the less sophisticated TPM had been compromised and discontinuing it to replace it with a more stringent but incompatible TPM scheme was the only way forward. Only after a public backlash Adobe reneged on the discontinuation of the older TPM scheme (Hoffelder, 2014).

### **The New Role of the Library**

Perhaps the most effective method libraries have to fight against these circumstances is advocacy and better licensing strategies. In the case of university libraries in Ontario this is primarily seen through the work of a consortia known as the Ontario Council of University Libraries (OCUL). The goal and purpose of OCUL has many outcomes but the one most relevant here is enabling those in the library responsible for electronic collection development to negotiate better usage terms in licensed content. A 'model license' is available from the OCUL site that has draft clauses a library can utilize during the negotiation process with content providers.<sup>3</sup> Another positive output of OCUL in this regard is a multi-site 'License Information' presentation platform<sup>4</sup>. Here is presented easy to understand statements that allow users to see at a glance if their intended usage is currently admissible under the terms of the content's usage agreement.

This usage information is embedded into the full text presentation system as a user conducts their research. Typically this system is another electronic resources provided to users in the library that acts as intermediary between abstract only database products and publisher/aggregator full text databases. Interspersed with links to full text pdfs are informative

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<sup>3</sup> <http://www.ocul.on.ca/collections/licenses>

<sup>4</sup> <http://guides.scholarsportal.info/our> provides the implementation details of the system aimed at library staff.



labels that, at a glance, display the allowable usage rights for the many categories of typical usage.

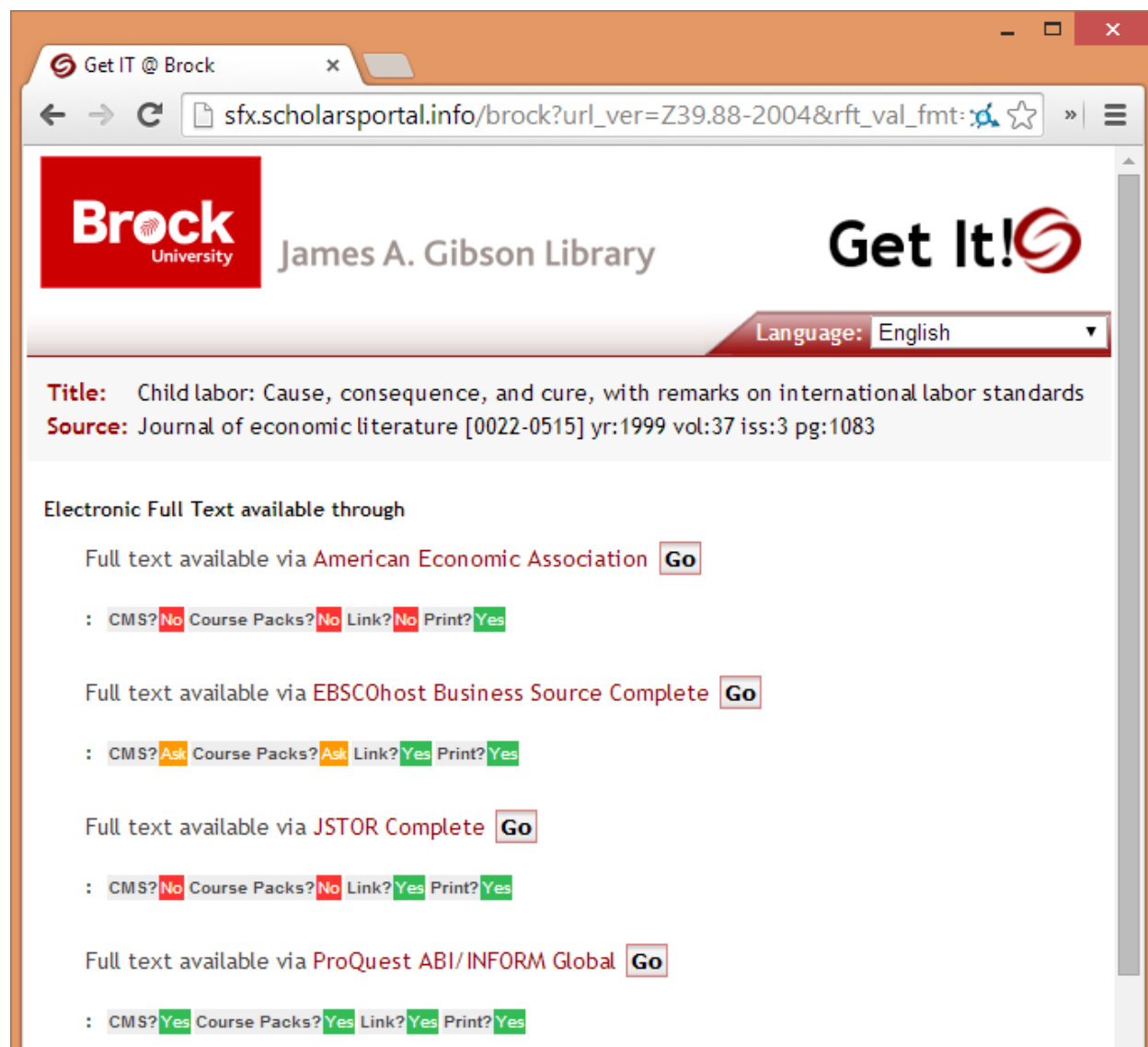


Figure 1. (Source: [http://sfx.scholarsportal.info/brock?url\\_ver=Z39.88-2004&rft\\_val\\_fmt=info:ofi/fmt:kev:mtx:journal&genre=article&sid=ProQ:ProQ%3Aabiglobal&atitle=Child+labor%3A+Cause%2C+consequence%2C+and+cure%2C+with+remarks+on+international+labor+standards&title=Journal+of+Economic+Literature&issn=00220515&date=1999-09-01&volume=37&issue=3&spage=1083&au=Basu%2C+Kaushik&isbn=&jtitle=Journal+of+Economic+Literature&bttitle=&rft\\_id=info:eric/&rft\\_id=info:doi/](http://sfx.scholarsportal.info/brock?url_ver=Z39.88-2004&rft_val_fmt=info:ofi/fmt:kev:mtx:journal&genre=article&sid=ProQ:ProQ%3Aabiglobal&atitle=Child+labor%3A+Cause%2C+consequence%2C+and+cure%2C+with+remarks+on+international+labor+standards&title=Journal+of+Economic+Literature&issn=00220515&date=1999-09-01&volume=37&issue=3&spage=1083&au=Basu%2C+Kaushik&isbn=&jtitle=Journal+of+Economic+Literature&bttitle=&rft_id=info:eric/&rft_id=info:doi/))

In Figure 1 the user is attempting to find the full-text of a citation found in the *Journal of Economic Literature*. The full-text retrieval system has identified that a user at Brock University can access this particular paper through 4 different database products. Each platform with its own stated restrictions. The juxtaposition of all 4 full-text options is striking. If attempting to

retrieve this article from the publisher website the American Economic Association, the information system indicates that it is not possible to even create a link to the citation due to restrictions placed upon the licensing agreement. However it is possible to do so via different platforms. For example via the ABI platform there is seemingly no problem with attempting the same process. Consider the following once the user clicks through the information system to discover the extended usage rights presented to them.

The screenshot shows a web browser window with the address bar displaying [https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=American\\_Economic\\_Association](https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=American_Economic_Association). The page header features the Brock University logo and the text "James A. Gibson Library". Below the header, there is a link "« Back to Browse". The main content area is titled "American Economic Association" and "License Terms of Use".

**For Library Users**

Can I post a copy in a course management system?	No	You may not include material from this resource in course management systems like Sakai. For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>
Can I put it in a course pack?	No	You may not include material from this resource in course packs, which are compilations of articles for use by students in a class. For inquiries: <a href="#">Brock Campus Store</a> <a href="#">More/Less Information</a>
Can I link to it?	No	You may not create a persistent electronic link to an individual article or ebook. For information: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>

**Interlibrary Loan**

Is ILL allowed?	No	For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>
ILL Electronic	No	For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>
ILL Ariel	No	For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>

Figure 2. (Source: [https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=American\\_Economic\\_Association](https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=American_Economic_Association))

The screenshot shows a web browser window with the URL [https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=ABI\\_Inform](https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=ABI_Inform). The page header features the Brock University logo and the name "James A. Gibson Library". Below the header, there is a link "« Back to Browse". The main content area is titled "ABI Inform Global" and "License Terms of Use". Under the heading "For Library Users", there are three questions with "Yes" answers and corresponding permissions:

Can I post a copy in a course management system?	Yes	You may include material from this resource in course management systems like Sakai. For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>
Can I put it in a course pack?	Yes	You may include material from this resource in course packs, which are compilations of articles for use by students in a class. For inquiries: <a href="#">Brock Campus Store</a> <a href="#">More/Less Information</a>
Can I link to it?	Yes	You may create a persistent electronic link to an individual article or ebook. Information about creating persistent links: <a href="#">Brock Library</a> ; <a href="#">Brock Centre for Pedagogical Innovation</a> <a href="#">More/Less Information</a>

Below this, under the heading "Interlibrary Loan", there are three more questions, all with "Yes" answers:

Is ILL allowed?	Yes	For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>
ILL Electronic	Yes	For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>
ILL Ariel	Yes	For further inquiries: <a href="mailto:liblicense@brocku.ca">liblicense@brocku.ca</a> <a href="#">More/Less Information</a>

Figure 3. (Source: [https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=ABI\\_Inform](https://brock.scholarsportal.info/licenses/staff/?lang=en&tag=ABI_Inform))

Figure 2 shows us conclusive information that Interlibrary Loan (amongst other users) is strictly forbidden when accessing this particular citation via the publisher's platform. Figure 3 shows what the user would see after clicking through to the content from a different provider. They are told here that they can use the material for an interlibrary loan request. Although the restrictions seem capricious they are in fact indicative of allowable uses that result from negotiated licensing agreements with content providers. In this case at some point the ABI platform negotiated usage rights for the American Economic Association content that were in fact less restrictive than obtaining the information directly from the publisher. If not negotiated perhaps they were implicitly allowed due to the terms of having content available via the ABI platform. A publisher is interested in having their material available in many different database products to help expand readership and prestige, but this often comes at the price of succeeding exclusive control of the content. Either way the end user in the library can

effectively obtain the content they are looking for without needing a working knowledge of copyright regulations, or insight into content licensing agreements.

Of course the best way to circumvent restrictive copyright concerns and crippling TPMs is to avoid them altogether. Here another advocacy venue is under the purview of the Library. This is through a licensing scheme known as Creative Commons<sup>5</sup>. Under this licensing scheme the work is made available to all from the very get go. This is akin to the idea of Open Source often seen when dealing with software. The exclusive monopoly to the content is foregone. The idea with Creative Commons is the work is produced by the content creator with the intention of unrestricted distribution right from the very start. Detractors often state that material that is made available via Creative Commons or by Open Access is somehow less rigorous and of a lower caliber, or not produced through peer review mechanisms but ultimately this remains just a popular misconception. For example the highly respectable and highly cited journal *PLOS ONE* has never charged access to its content but enjoys a high prestige. This lack of subscription fee allowing all manner of scholar the ability to use it for teaching or research. This is particularly beneficial to scholars in development countries that do not have access to libraries with large collection development budgets. Let alone large Canadian research institutes trying to negotiate allowable terms with content providers.

In circumstances where Creative Commons or Open Access licensing simply is not possible the library will also advocate for material to be available via some sort of modified Open Access agreement. The details and methods of making content available via Open Access vary by discipline and publishing house but generally speaking it can be reduced to two mechanisms: Embargo/Paywall and Payment to liberate. Under the embargo method a content producer gives exclusive publication rights to the publisher for a predetermined period of time. The paywall is then the subscription price of the journal incurred by the Library. After the expiry of that embargo the work can (through any number of methods) be made available to interested users free of charge. In practice this means the author retains rights over their work and simply allows the publisher to benefit from a temporary monopoly to the item. Libraries then work with authors to have their work posted to an institutional or discipline specific repository, thus enabling others to access the content even without a subscription to the original publication.

In the pay to liberate model, the content author pays a fee to the publisher to have the work immediately available without any restriction. This fee is not trivial. In the case of the previously mentioned *PLOS ONE* the author submission fee is \$1350 USD. Thus the cost to have the work made Open Access can be quite restrictive and effectively shifts the cost from the library that has a collection budget to the individual researcher who is most likely operating from a grant that is probably already limited in what it covers. In fact libraries will devote a portion of their collection development budget to create awards for authors to seek funds to pay for these fees. The library at Brock University has created a 10,000\$ annual fund started in 2011 for just this

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<sup>5</sup> <https://creativecommons.org/about>

purpose<sup>6</sup>. Authors facing a submission fee are welcome to petition funds from the library to cover such expenses. There is some mixed feelings amongst libraries whether this is good practice or not. Cannibalizing limited collection development funds to pay for open access rights to small amounts of materials is a difficult proposition to make.

These copyright liberated schemes provide different levels of success across disciplines and publishers however as a strategy to combat restrictions due to copyright limitations they are gaining ground. A database, which has received funding from the large UK organization JISC, called SHERPA/RoMEO<sup>7</sup> has been created that attempts to keep track of what copyright policies are enforced by different publishers, and just how amenable they are to author's ability to retain copyright over content. Over 72% of publishers tracked by the system<sup>8</sup> from a variety of different disciplines, countries and traditions offer some method to allow a content author to make a personal copy of a published work available through an archive.

Lastly in the realm of advocacy libraries have made strides in creating copyright information portals to alert library users to the complications surrounding the fair and equitable use of material. The library at Brock University has devised and implemented such a page<sup>9</sup>, and during the 2013-2014 academic year it was only accessed approximately 1400 times. Not to be outdone the library at Brock University has established a copyright advisement service. Library users posed with a difficult use case can contact Library staff members who will attempt to assess the situation and provide some kind of advice on how to move forward. The most interesting aspect of the service is that it sees almost the same amount of usage from library staff members as external library users. This type of service is proliferating through academic libraries across the country and might soon obtain the honour of traditional library service on par with the previously mentioned interlibrary loan and reserve collection.

## Conclusion

The interpretations of copyright restrictions is an every changing game. Copyright law is meant to grant temporary monopoly to content creators so that they may be compensated for their efforts but functionally speaking content creators have been creating restrictions to use by invoking copyright concerns and utilizing imposed restrictions that have little to do with limiting infringing use. Most often they are facilitated by TPMs that create barriers to usage that have

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<sup>6</sup> Details available: <http://dr.library.brocku.ca/handle/10464/4124>. 3 years of funding have paid for 17 articles.

<sup>7</sup> <http://www.sherpa.ac.uk/romeo>

<sup>8</sup> <http://www.sherpa.ac.uk/romeo/statistics.php?la=en&flDnum=|&mode=simple>

<sup>9</sup> <https://brocku.ca/library/campus-copyright-information>

slowly been creeping into acceptable practice in the library in the past few years. The main resource Libraries have to aid users in navigating these restrictions are limited but very important. Since the circumvention and modification of material protected by TPM is a non-starter the library needs to approach in a more subtle manner. This approach includes advocacy to ensure that content creators retain copyright of their material and to publish (if possible) in less restrictive venues. Secondly, general education on copyright issues help illuminate and steer the library user through the difficult terms that are now a stark reality of research and teaching.

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